

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DARNELL MCGARY,  
Petitioner

V.

HENRY RICHARDS,  
Respondent.

Case No. C09-5156BHS

**ORDER OVERRULING  
PETITIONER'S OBJECTIONS  
AND ADOPTING REPORT AND  
RECOMMENDATION; AND  
DENYING PETITIONER'S  
MOTION FOR  
RECONSIDERATION**

This matter comes before the Court on the report and recommendation of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 21), Petitioner's objections to the report and recommendation (Dkt. 23), and Petitioner's motion for reconsideration (Dkt. 22) of the Court's order denying motion to appoint counsel (Dkt. 20). The Court, having reviewed these filings and the remaining record, hereby overrules Petitioner's objections, adopts the report and recommendation, dismisses the petition, and denies Petitioner's motion for reconsideration.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

On March 20, 2009, Petitioner filed a petition for writ of habeas corpus. Dkt. 1. On May 21, 2009, Petitioner filed a motion to appoint counsel (Dkt. 13) and then corrected this motion on May 29, 2009 (Dkt. 14). The Court denied Petitioner's motion to appoint counsel on August 19, 2009. Dkt. 20.

1       On August 19, 2009, the Honorable Karen L. Strombom, United States Magistrate  
2 Judge, entered a report and recommendation. Dkt. 21. Judge Strombom recommended that  
3 the Court should deny Petitioner's petition. *Id.* at 12.

4       On August 28, 2009, Petitioner filed objections to the report and recommendation.  
5 Dkt. 23. On the same day, Petitioner also filed a motion for reconsideration of the Court's  
6 order denying the appointment of counsel. Dkt. 22.

7       On September 9, 2009, Respondent filed a response to Petitioner's objections to the  
8 report and recommendation. Dkt. 24. Respondent asserted therein that the report and  
9 recommendation should be adopted by the Court. *Id.* at 4.

10 **A. Report and Recommendation**

11       Petitioner objects to the report and recommendations of the Magistrate Judge. *See*  
12 Dkt. 23. Where objections to a magistrate judge's report and recommendation are filed, the  
13 Court reviews the objected-to portions of the report and recommendation *de novo*:

14       A judge of the court shall make a *de novo* determination of those portions of  
15 the report or specified proposed findings or recommendations to which  
16 objection is made. A judge of the court may accept, reject, or modify, in whole  
17 or in part, the findings and recommendations made by the magistrate judge.  
18 The judge may also receive further evidence or recommit the matter to the  
19 magistrate judge with instructions.

20       28 U.S.C. § 636(b)(1); accord, Rule 8(b), Rules Governing Section 2254 Cases. As this rule  
21 dictates, the Court will review *de novo* "those portions of the report or specified proposed  
22 findings or recommendations to which objection is made."

23       Here, as Respondent points out, Petitioner has failed to "identify any errors in Judge  
24 Strombom's reasoning" with respect to the report and recommendation. Dkt. 24 at 3.  
25 Instead, Petitioner states again the same arguments raised in the petition for writ of habeas  
26 corpus. *Compare* Dkt. 2 (Petitioner's brief in support of petition for writ of habeas corpus)  
27 and Dkt. 21 (report and recommendation) with Dkt. 23 (petitioner's objections to report and  
28 recommendation that attempts to argue again the basis for granting the writ). Moreover, the  
Court finds no errors of law in the report and recommendation.

1 Therefore, because Petitioner does not object to the report and recommendation itself  
2 and the Court finds no errors of law in the same, the Court overrules Petitioner's objections,  
3 adopts the report and recommendation, and dismisses the petition.

4 **B. Motion for Reconsideration**

5 Petitioner moves this court to reconsider its order denying the of appointment of  
6 counsel (Dkt. 20). Dkt. 22. Motions for reconsideration are governed by Local Rule CR  
7(h), which provides as follows:

8 Motions for reconsideration are disfavored. The court will ordinarily  
9 deny such motions in the absence of a showing of manifest error in the  
prior ruling or a showing of new facts or legal authority which could not  
have been brought to its attention earlier with reasonable diligence.

10 Local Rule CR 7(h)(1).

11 Here, Petitioner's motion for reconsideration fails make any such showing. *See*  
12 *generally* Dkt. 22. Therefore, Petitioner's motion is denied.

13 **II. ORDER**

14 Therefore, it is hereby **ORDERED** that

15 (1) The Court **OVERRULES** Plaintiff's Objections;  
16 (2) The Court **ADOPTS** the Report and Recommendation;  
17 (3) The Court **DENIES** Petitioner's motion for reconsideration; and  
18 (4) This action is **DISMISSED**.

19 DATED this 29<sup>th</sup> day of September, 2009.

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BENJAMIN H. SETTLE  
United States District Judge